

The Communications Green Paper: A Reform Plan for Ofcom?



Sonia Livingstone, Head of the Department of Media and Communications at LSE, looks into Ofcom's recent past to find clues about its future after the Communications Green Paper.

Just before coming to **power in 2010**, David Cameron attacked Ofcom as an “unaccountable bureaucracy”, leading to shock waves through the sector. Yet last January at the Oxford Media Convention, his minister Ed Vaizey **claimed** that Ofcom “does an outstanding job.” Has the government changed its mind? Or can these claims be consistent – that the process by which Ofcom works is problematic, but the decisions it reaches are to be applauded?

In our just-published book, *Media Regulation: Governance in the Interests of Citizens and Consumers*, we show how Ofcom has in fact worked in a more accountable, evidence-based and deliberative ways than its critics ever expected – and we urgently call on the present government to sustain and strengthen them. But the relation between process and outcome is less assured. Through a series of case studies, we explore the claim – dear to the heart of public sphere theorists and social democrats – that insofar as Ofcom has acted as what we term “an institution in the public sphere”, its decisions have benefited the public interest.

But our conclusion is more downbeat – for despite the often admirable body of expert evidence produced, the independent consultation with diverse stakeholders generated, and the degree of accountability over process delivered, Ofcom has given more attention to consumers than citizens, and more to firms than to either. As we argue, finally, this is not only because the forces promoting market interests are so strong, but also because Ofcom's conception of public sphere engagement has been too narrow to imaginatively grasp what might be required to recognise and advance citizens' interests in a mediated democracy.

So, now that the government is about to release its Communications Green Paper, what should we expect, and what should we argue for? The Communications Act 2003 established Ofcom not only as the new converged regulator for a newly converging media market but also as one means by which New Labour would advance its vision of light touch, arms-length yet principled, evidence-based regulation that could advance the interests of both citizens and consumers in a complex, global age. Communications became a key sector within which New Labour applied its unique blend of public value-led processes combined with neoliberal goals (its promotion of **media literacy** exemplifies well this curious mix) – and for this reason we can see why Ofcom was top of Cameron's hit list when he called for a “bonfire of the quangos.”

Many will have a view on what the Green Paper should contain and why. We argue that the steps taken towards establishing Ofcom as an institution in the public sphere should be strengthened and expanded, not cut back as an inappropriate intrusion into public policy debates (for these, surely, have not moved to occur within government in any way that is remotely participatory). To support this view, we turn to the great theorist of the public sphere, Jürgen Habermas who, in his book *Between Facts and Norms*, examined what a social democracy can and should expect of its public institutions.

As Habermas advocates, and as we apply in our examination of Ofcom's work from 2003-2010, an institution charged by Parliament with furthering the interests of citizens and consumers should play a significant role in shaping public debate and deliberation on media and communications policy.

Specifically, it should adhere to four normative criteria according to which the institution (i) works to articulate and recognise the public interest and public concern, (ii) seeks explicitly to balance and reconcile the demands and constraints of potentially conflicting stakeholders, (iii) places an equal emphasis on achieving legitimacy and effectiveness, and (iv) sustains a reflexive awareness of the broader consequences of its actions and judgements. Clearly, these go beyond the **usual demands** that an institution be objective, open, accountable and honest, establishing a vital link between process and outcome in a manner worthy of serious consideration for those drafting the new Act.

Can a regulator deliver on such expectations? Well, in our case studies in *Media Regulation*, we suggest that Ofcom made significant headway in articulating the public interest, balancing constraints, combining effectiveness and legitimation, and enabling reflexivity regarding the consequences of regulation. In relation to public service broadcasting, for instance, Ofcom sought an understanding of public concern via opinion research and widespread public consultation, which showed continued public and civil society support for existing regulation and provision of public service broadcasting. In addition, Ofcom's detailed market analysis of the impact of public service broadcasting on broader competitiveness balanced the demands of public value and market impact. Ofcom's two reviews marked a shift from a focus on reform of PSB towards elaborating the conditions for its maintenance and enhancement, demonstrating reflexivity in relation to changing priorities and views concerning PSB.

In a further case study, of Ofcom's work on media literacy, we noted again the importance of research and consultation in engaging stakeholders. In many ways, Ofcom managed to promote key dimensions of media literacy (at least in terms of media use if not critical evaluation) at a time of high anxiety regarding the public's competence to navigate the new media landscape. Whether Ofcom could have expanded its relatively instrumental goals in relation to media literacy we shall never know, since this proved an early casualty of Hunt's changed regime.

Ofcom's approach since 2003 has combined three kinds of activity – the application of independent expertise (technical, market and consumer analysis), co-regulation (oversight of self-regulatory regimes) and public engagement in media policy (through consultation and research). To a significant degree, these created a flexible, regulatory regime that delivered effectiveness and legitimacy. The concern, in the run up to the new Communications Bill, is that current pressures – for example towards a purely administrative approach to regulation (focusing on the first of our three functions) – will take Ofcom backwards rather than forwards in strengthening the normative criteria by which deliberative processes could advance public interest outcomes in this increasingly complex, global, converged media and communications sector.

This blog was written in collaboration with Peter Lunt, Professor of Media and Communications, University of Leicester, and co-author of Media Regulation: Governance in the Interests of Citizens and Consumers.

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